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BEFORE THE

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Federal Communications Commission

WASHINGTON, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In Re Application of)	MM DOCKET <u>NO. 93-127</u>
)	
JANICE M. SCANTLAND)	File No. BPH-920113MC
)	
ROBERT G. CASAGRANDE)	File No. BPH-920115ME
)	
For a Construction Permit for)	
New FM Station on 104.3 MHz)	
at Richwood, Ohio)	

To: Administrative Law Judge Arthur I. Steinberg

MOTION FOR SUMMARY DECISION

Janice M. Scantland ("Scantland"), pursuant to Section 1.251 of the Commission's Rules, herein moves for summary decision of the site availability issues specified against her application. In support of this motion, the following is stated:

On March 31, 1993, Scantland petitioned for leave to amend her application to specify a new transmitter site. Scantland inadvertently failed in that amendment to certify that she has obtained assurance of the proposed site or structure by contacting the owner or person possessing control of the site or structure. As a result of that oversight, the following site availability issue was specified against Scantland in the Hearing Designation Order:

1. To determine whether Scantland has reasonable assurance that the transmitter site specified will be available to [her].

8 FCC Rcd 3074 (Chief, Audio Services Div., 1993)

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CAG

2.

This motion is being filed more than 20 days prior to the date set for the commencement of the hearing in this proceeding, and accordingly is properly considered under Section 1.251 of the Rules.

As demonstrated herein, there is no genuine issue as to any material fact and Scantland is entitled to summary decision of the site availability issue in her favor.

On June 1, 1993, in response to the Hearing Designation Order, Scantland petitioned to amend her application to provide a new site certification page. Therein, Everett Dotson was identified as the person contacted and an owner of the site. The amendment was accepted by the Presiding Judge. Order, FCC 93M-414 (released June 28, 1993).

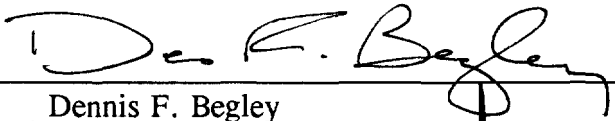
Attached hereto as Exhibit 1 is the declaration of Everett E. Dotson, who with his wife, owns the property specified by Scantland. His declaration confirms that he agreed to permit Scantland and competing applicant Robert G. Casagrande to specify this property as their proposed transmitter sites for a new FM station. Furthermore, Mr. Dotson's declaration confirms he provided Scantland, on December 7, 1992, a letter assuring her the site was available. That letter preceded the filing of Scantland's site change amendment by more than three months. That letter states that the site owner is willing to lease the site to Scantland upon mutually agreeable terms to be negotiated at the time of the lease. For the purposes of Scantland's financial projections, Mr. Dotson indicated that she may estimate the monthly rent to be \$650.00. Mr. Dotson's declaration states that the understanding set forth in his December 7, 1992 letter is still in effect. He also states in his declaration and his letter that if for some reason the site will not be available to her, he will advise her.

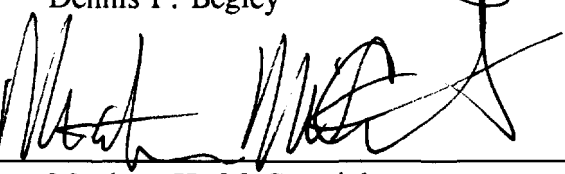
3.

In light of Mr. Dotson's declaration and his letter of December 7, 1992, no question exists that Scantland had, at the time of her March 31 amendment, reasonable assurance of the availability of the site specified therein. Furthermore, there is no question she continues to have a reasonable assurance of the availability of that site at this time. See, e.g., Elijah Broadcasting Corp., 5 FCC Rcd 5350, 5351 (1990) ("All that is ordinarily required for reasonable assurance is some clear indication from the landowner that he is amenable to entering into a future arrangement with the applicant for use of the property as its transmitter site, on terms to be negotiated, and that he would give notice of any change of intention.").

WHEREFORE, In light of all circumstances present, it is respectfully requested that this Motion for Summary Decision be GRANTED and that Issue No. 1, the site availability issue, be resolved in Scantland's favor.

JANICE M. SCANTLAND

By 
Dennis F. Begley

By 
Matthew H. McCormick

Her Counsel

Reddy, Begley & Martin
1001 22nd Street, N.W.
Suite 350
Washington, D.C. 20037

July 23, 1993

DECLARATION

Everett E. Dotson hereby declares, under penalty of perjury, that the following is true and correct:

I and my wife own a piece of property at 10540 Askins Road, ~~Magnolia Springs~~ ^{RICHWOOD}, Union County, Ohio, consisting of five acres. I have agreed to permit both Janice M. Scantland and Robert G. Casagrande to specify this property as their proposed transmitter sites for a new FM station.

As demonstrated by the attached letter that I have provided to Ms. Scantland on December 7, 1992, I have agreed to lease her the site upon mutually agreeable terms to be negotiated at the time of the lease. For purposes of her financial projections, I have indicated that she may estimate the monthly rent to be \$650.00.

This understanding with Ms. Scantland is still in effect. As indicated in my letter, if for some reason the site will not be available to her, I have promised to so advise.

Dated this 13th day of July, 1993.



Everett E. Dotson

Mr. Everett E. Dotson
10540 Askins Road, Magnetic Springs, Ohio 43036

December 7, 1992

Janice M. Scantland
Vernon Woods, P.O. Box 10,000
Marion, Ohio 43302

Re: Janice M. Scantland

Dear Mrs. Scantland:

This letter will confirm our understanding that we are


CERTIFICATE OF SERVICE

I, Pamela R. McKethan, hereby certify that on this 23rd day of July, 1993, copies of the foregoing **MOTION FOR SUMMARY DECISION** were hand delivered and mailed, first class, postage prepaid, to the following:

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Pamela R. McKethan

* HAND DELIVERED